



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 12, 2016
MAHS Docket No.: 15-024798
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a three-way telephone hearing was held on [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED] (Respondent).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for FAP?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED], to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residence.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$2,904 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,904.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective [REDACTED], the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.

- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (October 2015), pp.12-13; ASM 165 (May 2013), pp. 1-7.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 2015), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out-of-state.

To be eligible, a person must be a Michigan resident. BEM 220 (February 2014), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, pp. 1-2. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (February 2014), p. 3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 3.

First, the Department presented Respondent's "Search Application" screen to show that Respondent has previously applied for FAP benefits and she would have acknowledged her responsibility to report changes as required. See Exhibit A, p. 10.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 12-14. The FAP transaction history showed that from [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in Texas. See Exhibit A, pp. 12-14.

Third, the Department presented evidence that Respondent obtained a license to be a Licensed Vocational Nurse in the State of Texas and it expires on [REDACTED]. See Exhibit A, p. 18.

Fourth, the Department presented Respondent's Lexis Nexis profile to show that Respondent no longer resided in Michigan. See Exhibit A, pp. 19-35.

At the hearing, Respondent argued that she did not intend to commit an IPV of her FAP benefits. Respondent testified as to the following: (i) there was no dispute that the benefits were used in Texas; (ii) Respondent traveled back and forth from Texas to Michigan during the alleged fraud period and she would reside with her parents in Texas; (iii) Respondent would leave her Bridge Card with her son sometimes in Texas when she would travel to Michigan and would pay for food in Michigan with cash and/or family/friends in Michigan would supply her with food; (iv) Respondent was a witness in an ongoing court case from the State of New York and was receiving threats from the defendants friends in Michigan, so she traveled to Texas for safety purposes (Exhibit 1, pp. 6-7); (v) Respondent currently has both a Michigan driver's license that was issued just prior to the alleged fraud period (Exhibit 1, p. 1) and a Texas driver's license issued in [REDACTED]; (vi) she considered herself to be a Michigan resident during the alleged fraud period, but a Texas resident on or around [REDACTED]; (vii) her primary residence/home is in Michigan during the alleged fraud period (Exhibit

1, pp. 12-13) and signed a lease to reside in Texas on [REDACTED] (See Exhibit 1, p. 8); (viii) she did not deny that she applied for a nursing license in Texas on or around August 2014, but she finally obtained her license on [REDACTED] (Exhibit 1, pp. 2-4); and Respondent alleged that she renewed her nursing license in Michigan, but only provided proof that her Michigan nursing license expired on [REDACTED] (See Exhibit 1, p. 5); (ix) her home's electric bill is in her mother's name because she was in past due status and put it in her mother's name and provided a bill dated on or around [REDACTED] (Exhibit 1, p. 14); and (x) Respondent provided other documentation to support her argument (Exhibit 1, pp. 9-11).

In response, the OIG agent testified as to the following: (i) he believed Respondent was providing contradictory testimony; (ii) Respondent did not a valid response as to why she had exclusive spending in Texas, and did not provide proof that any of her utilities for her Michigan residence were in her name; (iii) he discovered that Chase Bank was paying her taxes for her residence to which Respondent stated Chase Bank does not own her home; (iv) when questioned as to why her mail was sent to her parent's mailing address rather than her Michigan residence, Respondent stated her important mail/the ongoing threats go to her parents Texas residence; and (v) ultimately the agent believed that she resided in Texas and she was renting out her Michigan residence and/or family resided in her home.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

First, the Department presented evidence to support its claim that Respondent purposely failed to report a change in residency in order to continue receiving FAP benefits from Michigan. However, Respondent also presented evidence to support her claim that she did not have a change in her Michigan residency during the allege fraud and therefore, did not commit an IPV of her FAP benefits. The undersigned finds that Respondent rebutted the Department's argument by presenting credible evidence demonstrating that she was a Michigan resident during the alleged fraud period. Respondent did not dispute that she became a Texas resident on or around August 2014 (the end of the alleged OI period), but the undersigned is only reviewing the time period of [REDACTED]. During this period, Respondent presented several documents showing her residence was in Michigan, i.e., deed, Michigan driver's license, Michigan nurse's license, etc... See Exhibit 1, pp. 1-15. As such, the undersigned finds that Respondent rebutted the Department's argument. The Department has failed to demonstrate that Respondent was not a Michigan resident during the alleged fraud/OI periods. Because the Department failed to satisfy its burden of showing that Respondent was not a Michigan resident during the alleged fraud period, the Department failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility.

Second, the Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the FAP transaction history/LexisNexis report/nursing license. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility. As such, in the absence of any clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state move for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In the present case, the Department alleged that Respondent purposely failed to report a change in residency in order to continue receiving FAP benefits from Michigan. As such, the Department argued that Respondent received an OI of FAP benefits because she was not eligible for benefits due to her out-of-state residency. However, as stated in the previous analysis, the Department failed to establish its burden of showing that Respondent did not reside in Michigan during the alleged fraud/OI period. Thus, the Department has failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of \$2,904 for the period of [REDACTED]. See Exhibit A, p. 3.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of FAP program benefits in the amount of \$2,904.

The Department is **ORDERED** to delete the OI and cease any recoupment action.

EF/hw



Eric Feldman

Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to [REDACTED]; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]